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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,346	08/01/2003	Raymond J. Severa	BONNE-B	3610

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EXAMINER

WALCZAK, DAVID J

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

JA

Office Action Summary	Application No. 10/632,346	Applicant(s) SEVERA, RAYMOND J.	
	Examiner David J. Walczak	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/1/03, 11/26/03</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Abstract

The abstract of the disclosure is objected to because phrases that can be implied, such as "is described" (see line 2) should not be present therein. Correction is required. See MPEP § 608.01(b).

Drawings

The drawings are objected to because reference character 100 (page 9, line 3) is not present in any of the drawings.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the brush and sponge (claim 16) must be shown or the features canceled from the claim. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

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consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities: On page 3, line 3 "holder 27" should be --shoulder 27--. Appropriate correction is required.

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: In regard to claim 14, the specification does not disclose that the upper portion housing is made from one "or more" of the listed materials. Further, the specification does not disclose the center reservoir portion and the lower cap portion can be made from one "or more" of the listed materials and further does not disclose that these two elements can be made from polybutylene ethylene-ethyl acrylate or ethylene-vinyl acetate. In regard to claim 15, the specification does not disclose that the pleated sleeve portion is made from one "or more" of the listed elements.

Claim Objections

Claims 3 and 8 are objected to because of the following informalities: On line 2 of claim 3 "housing" should be --portion-- and on line 2 of claim 8, "circular" should be --cylindrical-- (see page 6, line 21). Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claims 10-12, 25-29, 31, 33, 36 and 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In regard to claim 10, it is unclear as to whether or not the piston head claimed therein is intended to recite same piston head claimed in claim 1, or a different piston head. In regard to claim 25, an antecedent basis for "said plunger" should be defined.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 8, 10-13, 16, 17, 19, 20-23, 30 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Ford (as cited by Applicant). In regard to claim 1, Ford discloses a dispensing device comprised of an upper portion having a housing 20, a center substance reservoir 32, and a lower cap portion 132 containing an applicator 130 wherein the inner surface of the upper portion housing is capable of contacting a

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plunger 60 and wherein the plunger provides forward movement of a center toothed shaft 58 and piston head 16. In regard to claim 2, the housing 20 includes a top segment 70 and a bottom segment 72 wherein the top segment tapers at an end to form a push button (viewing Figure 2, the top left corner of element 20 has a small taper which forms a push button). In regard to claim 8, the toothed shaft 58 is essentially cylindrical/circular and includes an array of evenly spaced teeth 30 and a shaft projection (one of the teeth at the lower end of the shaft). In regard to claim 10, the shaft includes a piston head 16. In regard to claim 11, the piston head has a cylindrical wall with front and back peripheral lips 90. In regard to claim 12, a central recess of the piston receives the above defined shaft projection (when the piston is positioned at that area of the shaft) such that the shaft moves in unison with the piston. In regard to claim 13, the upper portion housing and plunger are slidable in a forward longitudinal direction. In regard to claim 16, the applicator is a brush 130. In regard to claims 17, 19, 20 and 21, the substance to be applied is a cosmetic (see column 1, lines 8-11). In regard to claim 22, the device operates without rotary action of the upper portion 20. In regard to claim 23, Ford discloses a dispensing device comprised of a slidable upper housing 20, an internal shaft 58, a substance reservoir 32 and an applicator 130 wherein the housing is connected to the shaft other than at the top portion thereof (see Figure 9 and column 10, lines 1-8) and the shaft is connected to a piston head 16 located in the reservoir such that when the housing is pressed, the piston supplies substance through the applicator. In regard to claim 30, the upper housing is made of

plastic (as evidenced by the cross-hatching thereof). In regard to claim 35, the substance being applied is a cosmetic.

Claims 23-25, 30, 35 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Thacker et al. (hereinafter Thacker). In regard to claim 23, Thacker discloses a dispensing device comprised of a slidable upper housing 16, 17, an internal shaft 14, a substance reservoir 1 and an applicator 4 wherein the housing is connected to the shaft other than at the top portion thereof and the shaft is connected to a piston head 13 located in the reservoir such that when the housing is pressed, the piston supplies substance through the applicator. In regard to claim 24, the upper housing has a push button portion 16 that is not capable of contacting the shaft when pressed. In regard to claim 25, the upper housing will move forward some distance with respect to the plunger before contact therebetween (due to the distance between ends 18 and the ratchets 14, see Figure 1), whereby the plunger and housing will then move in unison. In regard to claim 30, the upper housing is made from plastic (see column 3, lines 15-19). In regard to claims 35 and 36, the substance being dispensed is a cosmetic/personal care substance for the lips (see column 1, lines 1-5).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ford. Although the Ford reference does not disclose the spacing of the teeth of the specific material used to make the various portions, it is the Examiner's position that it would have been obvious to one of ordinary skill in the art at the time the invention was made that the teeth can be designed to have any suitable spacing and the various portions can be made from any suitable material, including those claimed, without effecting the overall operation of the device.

Claims 3 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ford in view of Guzzon. Although the Ford device does not include a pleated sleeve connected to the upper housing via a collar defining an undercut area, attention is directed to the Guzzon reference, which discloses another push button mechanism wherein such a pleated sleeve 6 is connected to the button 47 via a collar defining an undercut area 48 in order to render the mechanism sealed. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include such pleated sleeve (which can obviously be made from any suitable material) onto the push button 20 in the Ford device in order to render that push button mechanism sealed from outside elements.

Claims 4-7 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ford in view of Snyder. In regard to claim 4, although the bottom segment 72 of the upper portion 20 is not formed from evenly spaced fingers, the examiner takes official notice that push buttons are commonly structured to have such fingers in order to enable the button to be easily mounted to the housing. In support of this position,

attention is directed to the Snyder reference, which discloses another push button assembly wherein the bottom segment of the push button is formed from evenly spaced fingers 44. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to form the bottom segment 72 of the Ford device from such fingers in order to render the device easier to assemble. In regard to claims 5 and 6, as the plunger is not part of the claimed combination, the structure further limiting the plunger does not lend any patentable structure to the claims. Further, the Ford device is capable of being used with a plunger shaped as claimed. In regard to claim 7, the upper housing 20 slidably engages the plunger for a distance before contact therebetween via a housing shoulder enables the plunger and housing to operate in unison (see Figure 9 and column 10, lines 1-8). In regard to claim 18, the substance being dispensed is a cosmetic substance.

Claims 26-29, 31 and 37 are is rejected under 35 U.S.C. 103(a) as being unpatentable over Thacker in view of Guzzon. In regard to claim 26, the dispensing device of Thacker has an outer cylinder 9, 10. Although the Thacker device does not include a pleated sleeve connected to the outer cylinder, attention is directed to the Guzzon reference, which discloses another push button mechanism wherein such a pleated sleeve 6 is connected to the outer cylinder and push button in order to render the mechanism sealed. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include such pleated sleeve between the push button and outer cylinder of the Thacker device in order to render that push button mechanism sealed from outside elements. In regard to claim 27, the shaft

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advances in a forward longitudinal direction. In regard to claim 28, the piston head 13 is slidably received in the substance reservoir. In regard to claim 29, the outer cylinder 9, 10 forms a portion of the substance reservoir. In regard to claim 31, although the Thacker reference does not disclose the specifically claimed material, it is the Examiners' position that it would have been obvious to one of ordinary skill in the art at the time the invention was made that the upper housing can be made from any suitable material, including polypropylene, without effecting the overall operation of the device. In regard to claim 37, the substance being dispensed is a cosmetic/personal care product.

Claims 32, 34 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thacker in view of Delage. In regard to claims 32 and 34, although the applicator in the Thacker device is a brush, and not shaped as claimed, attention is directed to the Delage reference, which discloses another dispenser for material to be applied to the lips wherein the applicator includes a tip portion 130 with orifices 131 therein in order to effectively apply the substance to the lips. Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute such an applicator for the brush applicator currently employed on the Thacker device wherein such a modification would amount to the substitution of one functionally equivalent applicator for another and the selection of either applicator would work equally well on the Thacker device. In regard to claim 38, the substance being dispensed is a cosmetic/personal care substance.

Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thacker in view of Guzzon as applied to claim 26 above, and further in view of Delage. As discussed supra, the Thacker device (in view of the teachings of Delage) can obviously be formed with the claimed applicator.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Walczak whose telephone number is 571-272-4895. The examiner can normally be reached on Mon-Thurs, 6:30- 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David J. Walczak
Primary Examiner
Art Unit 3751

DJW
1/10/04